

No. 15605

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United States  
**Court of Appeals**  
for the Ninth Circuit

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GEORGE L. SCHARPF and  
WILLIAM FRED SCHARPF, Executors of the  
Estate of Louis C. Scharpf,  
Appellants,  
vs.  
UNITED STATES OF AMERICA,  
Appellee.

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On Appeal from the United States District Court  
for the District of Oregon

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BRIEF FOR THE APPELLANTS

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**BRIEF FOR THE APPELLANTS**

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OPINION BELOW

The opinion of the District Court is not reported in the  
official reports.

JURISDICTION

This is an appeal by the executors of the Estate of Louis  
C. Scharpf from a judgment of the United States District  
Court for the District of Oregon in an income tax refund  
action relating to the year 1944.

The tax in dispute was paid on March 8, 1948 (R. 6).



A refund claim was filed on March 13, 1948, and an amended refund claim was filed on February 16, 1951 (R. 6-7). Both claims were rejected on August 31, 1954 (R. 9). Within the time provided in Section 6532 of the Internal Revenue Code of 1954 and on September 19, 1955 appellants brought an action in the District Court for recovery of the tax paid (R. 40). Jurisdiction was conferred on the District Court by 28 U.S.C., Section 1346. The judgment was entered on April 4, 1957 (R. 41). Within 60 days thereafter and on May 31, 1957 a notice of appeal was filed (R. 41). Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

### STATEMENT OF THE CASE

The matter was presented to the District Court upon the stipulated facts set forth in the pretrial order together with the exhibits attached thereto. The only issue to be determined by this Court is the adequacy of the refund claims filed by the appellants' testator, since the appellee has stipulated that, if the Court finds a compliance by the decedent with the statutes and regulations relating to the filing of refund claims, the appellants are entitled to a refund in the amount of \$4,006.20, less the \$122.55 heretofore refunded to them, together with interest thereon as provided by law (R. 10).

In the year 1941 the decedent and his wife and one John J. Rogers and his wife formed a two-family partner-



ship under the name of Twin Oaks Builders Supply Co. to conduct a general building supply business in Eugene, Oregon. The same four people owned and controlled a corporation known as Twin Oaks Company, which owned the land and buildings used by the partnership under a lease agreement (R. 4-5).

In October of 1947 the Bureau of Internal Revenue decided not only to disallow each of the two-family partnerships but also to tax all of the partnership income to the corporation (R. 5). In December of 1947 the corporation filed its petition to the Tax Court of the United States, objecting to having the partnership income taxed to it, and in March of 1948 the decedent paid his individual tax deficiency under protest and filed a general protective refund claim a few days later. The statement incorporated in that refund claim was as follows:

"In a proceeding now pending before The Tax Court of the United States, Docket No. 16845, the Commissioner of Internal Revenue has taken the position that all or a substantial portion of the income of this taxpayer for the year 1944 was the income of a corporation known as Twin Oaks Company. Should the Commissioner prevail in such pending litigation, this taxpayer will be entitled to a refund of all or a substantial part of the tax paid by him individually as above described. This claim is filed for the purpose of staying the running of the Statute of Limitations as to the year 1944, and it is requested that any action thereon be delayed until the decision of The Tax Court of the United

States shall have been rendered *and a final determination had as to the taxation of the income of this taxpayer.*" (Ex. 12, R. 6). (emphasis supplied)

In July of 1948 the corporation's income tax case came on for trial in the Tax Court, and in March of 1949 a decision was entered in favor of the Commissioner of Internal Revenue (R. 5-7). The corporation appealed its case to this Court, and in July of 1950 this Court reversed the decision of the Tax Court and held not only that the partnership income could not be taxed to the corporation but further declared that "the partnership was entitled to full recognition for tax purposes." *Twin Oaks Company vs. Commissioner*, 183 F. 2d 385.

In February of 1951 the decedent, Louis C. Scharpf, filed an amended refund claim for the year 1944 which was intended to clarify the grounds set forth in his original refund claim. The statement attached to the amended refund claim was as follows:

"On or about January 25, 1941, I and my wife, Eva M. Scharpf, and John J. Rogers and his wife, Corabelle M. Rogers, entered into a written partnership agreement, effective January 1, 1941, for the purpose of conducting a business, under the name of Twin Oaks Builders Supply Co., of general supply in the City of Eugene, Oregon. Each of the parties contributed \$2000.00 to the partnership capital and also obligated themselves on a promissory note of the partnership payable to Twin Oaks Company, a corporation, in the amount of \$89,-

378.35, in payment for certain assets which were thereafter used by the partnership in its business. By the terms of the said partnership agreement, as amended, the profits of the said business were to be divided equally among the said parties after payment to me and John J. Rogers of the sum of \$9,000.00 per year each, and the payment to Corabelle M. Rogers and Eva M. Scharpf of the sum of \$300.00 per year each. The losses of the said business were to be divided equally among the partners.

"In entering into the said partnership the partners had a bona fide intent to be partners in the conduct of said business and to share in the profits and losses thereof.

"The said partnership was bona fide in all respects and was entitled to recognition for federal income tax purposes.

"This claim is for the amount of deficiency that was asserted against me upon determination by the Bureau of Internal Revenue that the distributive income of Eva M. Scharpf from the said partnership was taxable to me, less overassessment determined to be due on such ground to Eva M. Scharpf." (Ex. 13, R. 7-9).

In October of 1954 appellants were advised by the District Director of Internal Revenue in Portland, Oregon, that it was determined and agreed that there was an over-assessment or overpayment of the income tax of Louis C. Scharpf for the year 1944 in the amount of \$4,006.20, (R. 9), but the Director refused to refund the amount which was admitted to be owing, making the technical contentions that:

(a) The refund claim filed March 13, 1948, although timely, did not apprise the Commissioner of Internal Revenue of the exact basis therefor, and

(b) The amended refund claim filed February 16, 1951, although apprising the Commissioner of Internal Revenue of the exact basis therefor, was not timely and could not be considered as an amendment of the first refund claim.

### SPECIFICATION OF ERRORS

1. The District Court erred in its Conclusion of Law No. 1, in concluding that "The claim for refund filed on March 13, 1948, by Louis C. Scharpf for the year 1944 was not a proper claim for refund inasmuch as it did not set forth the grounds or basis of this proceeding as required by Sections 322 and 3772 of the Internal Revenue Code of 1939."

2. The District Court erred in its Conclusion of Law No. 2, in concluding that "The claim for refund filed on February 16, 1951, by Louis C. Scharpf for the year 1944 was not a timely and proper claim for refund as required by Sections 322 and 3772 of the Internal Revenue Code of 1939, nor was it a timely or proper amendment of his earlier claim for refund."

3. The District Court erred in its Conclusion of Law

No. 3, in concluding that "The Commissioner of Internal Revenue waived none of his requirements in respect to the form or content of the claims for refund."

4. The District Court erred in its Conclusion of Law No. 4, in concluding that "The action of the Commissioner of Internal Revenue in disallowing the claims for refund was proper."

5. The District Court erred in entering judgment for the appellee.

### SUMMARY OF ARGUMENT

1. The original refund claim filed on March 13, 1948, by Louis C. Scharpf for the year 1944 (Exhibit 12, R. 6-7) was filed within two years of the date of payment (March 8, 1948) of the tax, the recovery of which is sought in this action. At that time the Commissioner of Internal Revenue was apprised of sufficient facts to ascertain the exact basis thereof.

2. In the alternative, appellants contend that the refund claim filed on February 16, 1951, by Louis C. Scharpf for the year 1944 (Exhibit 13, R. 7-9) was a proper and timely amendment of his earlier refund claim, as it was filed prior to the formal disallowance of said refund claim.



3. In the further alternative, appellants contend that the various exhibits introduced in the Tax Court trial of the case of *Twin Oaks Company v. Commissioner* evidences that fact that the Commissioner of Internal Revenue was at all times aware of the exact basis of the refund claim filed by Louis C. Scharpf. The subsequently filed instruments and documents constituted amendments of and supplements to the original refund claim.

4. In the further alternative, appellants contend that the statements contained in the letter of March 6, 1948, (Exhibit 11, R. 26-27) constituted an informal refund claim.

5. In the final alternative, appellants contend that the actions of the Commissioner of Internal Revenue constituted a waiver of his regulations as to the required form of a refund claim.

## ARGUMENT

### I.

The original refund claim filed on March 13, 1948, by Louis C. Scharpf for the year 1944 was filed within two years of the date of payment of the tax, the recovery of which was sought in the District Court. At the time the claim was filed the Commissioner of Internal Revenue was apprised of sufficient facts to ascertain the exact basis thereof.

Section 322(b) of the 1939 Internal Revenue Code (applicable to the year 1944 in question here) provided,

so far as material here, that a refund claim had to be filed within "two years from the time the tax was paid." Since the first refund claim was filed only a few days after the payment (R. 6), it is readily apparent that there was a timely refund claim.

Suits for refunds were governed by Section 3772(a)(1) of the 1939 Internal Revenue Code, which provided as follows:

"Claim—No suit or proceeding shall be maintained in any Court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof."

The pertinent part of the Regulation implementing these code sections provided:

"No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed prior to the expiration of such period. The claim must set forth in detail and under oath each ground upon which a refund is claimed, and facts sufficient to apprise the



Commissioner of the exact basis thereof." (Reg. 111, Sec. 29.322-3)

Appellants submit that the District Court overstressed the first part of the original refund claim and failed to note that the decedent in his original claim also was asking to have his tax matters for the year 1944 held in abeyance pending the outcome of the corporation's litigation. The family partnership issue was indirectly involved. (R. 31-36)

Since Louis C. Scharpf had paid the deficiency upon the basis of the revenue agent's report disallowing the family partnership (Exhibit 4), it can hardly be questioned that the Commissioner was unaware of the basis of the claim. The decedent's payment of the additional tax on March 6, 1948, accompanied by his letter of transmittal in which he indicated his protest (Exhibit 11, R. 26-27), followed a few days later by the refund claim, should have left no doubt as to the general nature of his claim. The Commissioner was not misled by the somewhat vague statement of the grounds for refund. Cf. *Scovill Manufacturing Co. v. Fitzpatrick, Collector*, 215 F. 2d 567. "The sufficiency of a claim for refund is to be judged by the substance as related to the facts, rather than the form in which it is stated." *Higginson v. U. S., Ct. Cl.*, 81 F. Supp. 254.

The Court of Appeals for the District of Columbia Circuit, in the case *Keneipp v. U. S.*, 184 F.2d 263, suggested

that the public policy involved in cases of this nature should be as follows:

"The principles which determine the sufficiency of claims for refund have been stated and restated. The rule is that the claim must be sufficient to advise the Commissioner of Internal Revenue as to the items as to which the taxpayer claims error and the grounds upon which the taxpayer makes his claim. If the Commissioner understands the grounds and deals with the claim on the basis of his understanding, the claim is sufficient. A basic public policy is involved in this broad doctrine. Insistence upon nice technicalities of expression on the part of taxpayers in dealings with the Government concerning taxes must certainly compel taxpayers to deal with the Government through technicians. The Bureau of Internal Revenue has long sought to encourage a direct, informal and non-technical presentation."

The record of the then current dealings between the Bureau of Internal Revenue and the taxpayer, as shown by the numerous exhibits herein, should leave little doubt that the Commissioner was at that time apprised of sufficient facts to ascertain the exact basis of the decedent's claim.

As a result of the Commissioner's letter of October 3, 1947, (R. 5) Louis C. Scharpf, on March 6, 1948, paid the assessment of \$8,328.06 by a check for \$3,403.97 plus a credit for the overassessments determined for his wife, Eva M. Scharpf (R. 6, 26-28). This credit included the payment of \$4,196.25, the full amount of the tax which the wife

paid for the year 1944 (Ex. 2), and it was based upon the fact that she and her husband were bona fide partners.

On March 13, 1948, Louis C. Scharpf filed a claim for refund of \$7,131.44 (R. 6), which represented his 1944 tax (Ex. 1) computed on the basis that he and his wife were bona fide partners.

If at that time Louis C. Scharpf had decided to forego his claim that a bona fide partnership existed between him and his wife, he would have filed a claim for \$15,459.50 (\$7,131.44 plus \$8,328.06) instead of a claim for only \$7,131.44. If all of the income properly belonged to the corporation, as contended by the Commissioner in the corporation's Tax Court proceeding, he would have been entitled to the larger amount.

On the same day that Louis C. Scharpf filed his first refund claim, his wife filed a refund claim for \$4,196.28 (Ex. 14, R. 27-29), even though she had previously authorized the Commissioner to credit such overassessment against her husband's deficiency (R. 27). The Commissioner advised her to do so (Ex. 5). In her claim (R. 29) she called attention to the fact that the Commissioner had ruled that her income for the year 1944 was taxable to her husband and she also called attention to the proceeding in the Tax Court in which the Commissioner claimed that the income that she and her husband had reported was properly income

of the corporation. Her claim for refund stated, in part, "Should the Commissioner prevail in either of these positions, this taxpayer will be entitled to a refund (of) all or substantially all of the tax paid by her as above described."

The only basis upon which she would have been entitled to a return of the \$4,196.25 would be if it was determined that the Commissioner had erred in deciding that she and her husband were not bona fide partners but that he was correct in determining that the income properly belonged to the corporation. We submit that the filing of these two claims together also put the Commissioner on notice that the claim of Louis C. Scharpf for a refund was based in part upon the Commissioner's wrongful refusal to recognize the partnership.

On September 6, 1949, the Commissioner acknowledged that he had examined the refund claim of Eva M. Scharpf and the issues raised therein (R. 30).

In *National Forge & Ordnance Company v. The United States*, decided July 12, 1957, the Court of Claims had the following comments on the position taken by the government in these cases:

"Attorneys for the Government frequently ask us to apply to claims for refund a requirement of particularity almost as strict as is customarily applied to indictments

for crime. The rule of *strictissimi juris* is not applicable to claims for refund. All that is required of them, as a predicate for suit in this court is that they put the Commissioner of Internal Revenue on notice of the ground of the taxpayer's claim that his taxes were erroneously computed. This does not have to be stated with any greater particularity than is necessary to draw the Commissioner's attention to the claim he makes in his subsequent suit."

## II.

In the alternative, appellants contend that the refund claim filed on February 16, 1951, was a proper and timely amendment of the earlier refund claim as it was filed prior to the formal disallowance of the first refund claim.

A refund claim may be amended at any time before it is formally rejected, and any number of refund claims may be filed for the same taxable year.

Assuming, *arguendo*, that the original refund claim was not adequate to apprise the Commissioner of Internal Revenue of the taxpayer's claim, then we submit that the grounds thereof were duly clarified by the claim filed on February 16, 1951. Since the two year period following payment of the tax ended on March 6, 1950 (a few months prior to the decision of this Court in *Twin Oaks Company v. Commissioner*, *supra*), the question is presented as to whether the original March, 1948 claim could be amended by the Feb-



ruary, 1951 claim. It should be remembered that the March, 1948 claim had not been rejected prior to the filing of the amended claim—in fact, both claims were formally rejected at the same time on August 31, 1954. (R. 9-10)

The general rule applicable to the filing of amended refund claims, after the statute of limitations has run, was stated by the Court of Claims in its opinion in *Addressograph-Multigraph Corp. v. United States*, 78 F. Supp. 111, at 121:

“Without reviewing all of the cited authorities, it is well to note the statement of the rule which was set out in the case of *Pink v. United States*, 2 Cir., 1939, 105 F.2d 183, 187,

‘Whether a new ground of recovery may be introduced after the statute has run by amending a pending claim filed in time depends upon the facts which an investigation of the original claim would disclose. Where the facts upon which the amendment is based would necessarily have been ascertained by the Commissioner in determining the merits of the original claim, the amendment is proper. *Bemis Bro. Bag Co. v. United States*, 289 U. S. 28, 53 S. Ct. 454, 77 L. Ed. 1011; *United States v. Memphis Cotton Oil Co.*, 288 U. S. 62, 53 S. Ct. 278, 77 L. Ed. 619; *United States v. Factors & Finance Co.*, 288 U. S. 89, 53 S. Ct. 287, 77 L. Ed. 633. The rule is otherwise when the amendment requires the examination of new matters which would not have been disclosed by an investigation of the original claim. *United States v. Andrews* 302 U. S. 517, 58 S. Ct. 315,

82 L. Ed. 398; *United States v. Garbutt Oil Co.*, 302 U. S. 528, 58 S.Ct. 320, 82 L. Ed. 405; *Marks v. United States*, 2 Cir., 98 F.2d 564.' ”

The *Andrews* and *Garbutt Oil Co.* cases, cited above, decided the same day by the Supreme Court, appear to be inapposite here because the family partnership issue which was specifically stated in the amended claim of Louis C. Scharpf would have been “disclosed by an investigation of the original claim.” The original refund claim referred to the proceeding in the Tax Court, and an examination of the Tax Court proceedings (Ex. 16, R. 31-36) and the exhibits introduced therein (Ex. 15 (a) to (h), incl.) will show that the Commissioner was well aware of the continuing controversy on the family partnership issue.

### III.

In the further alternative, appellants contend that the various exhibits introduced in the Tax Court trial of the case of *Twin Oaks Company v. Commissioner* evidence the fact that the Commissioner of Internal Revenue was at all times aware of the exact basis of the refund claim filed by Louis C. Scharpf. The subsequently filed instruments and documents constituted amendments of and supplements to the original refund claim.

An examination of the various exhibits in the Tax Court proceedings which were received in evidence by the District Court in this proceeding should demonstrate the fact



that the Commissioner was not misled by the first refund claim which was filed. We have also had printed for the examination by this Court a portion of the opening statement by counsel for the Commissioner in the Tax Court proceedings (R. 34-36) which clearly indicates that the Commissioner was fully apprised of the nature of the decedent's claim.

Since the tax in question here was paid in March, 1948, it should follow that, even if we accept appellee's theory, any documents filed by the taxpayer before March 1950 constitute timely amendments to the original refund claim. The Tax Court trial took place in June 1948, and appellants submit that the various exhibits introduced by the decedent at that time constituted amendments of and supplements to the original refund claim.

Two 1946 decisions of this Court, namely, *U. S. v. Pierotti*, 154 F. 2d 758, and *Rogan, Collector v. Ferry*, 154 F.2d 974, indicate that this Court favors the realistic application of the refund claim regulations which appellants are asking this Court to apply to the instant case. In the *Pierotti* case this Court stated:

"The Supreme Court of the United States has held that a notice fairly advising the Commissioner of Internal Revenue of the nature of taxpayer's claim which could nevertheless be rejected by him because too general or

not complying with formal requirements, may be amended *after* the statute of limitations has run to correct the lack of specificity. It would therefore seem clear that supporting documents adding new and alternate grounds for refunds, filed with the Commissioner two years *before* the statute of limitations had run, may be considered as amendments or additions to the original claim.

"The principal requirement of the law and the regulations is that the Commissioner be apprised of the exact basis of each ground on which a refund is claimed in order that he may investigate the facts relative to these grounds and make his decision accordingly.

"A taxpayer may state as many grounds for refunds as he wishes, regardless of consistency, provided facts are disclosed on which the Commissioner may act. *Kales v. United States*, 6 Cir., 115 F. 2d 497, 501, affirmed 314 U. S. 186, 62 S.Ct. 214, 86 L. Ed. 132. Affidavits, letters or other statements filed with the Commissioner in support of the claim may all be considered as part of the claim for refund, if they bring the matters in controversy to the attention of the Commissioner and disclose grounds and facts on which he may act intelligently."

In *Rogan v. Ferry*, *supra*, this Court pointed out that "The statute and regulations governing claims are devised for the convenience of government officials in passing on claims for refunds and in preparing for trial, and they are not 'traps for the unwary'."

## IV.

In the further alternative, appellants contend that the statements contained in the letter of March 6, 1948, (R. 26-27) constituted an informal refund claim.

The letter of March 6, 1948, with which the payment of the additional tax for the year 1944 was made, contained the following statement:

"The payment of the deficiency above described and the application of the credits as above set out are not to be construed as an admission of the correctness of the determinations of the Commissioner of Internal Revenue, nor a waiver of taxpayers' right to a refund of any or all of the deficiency concerned in the event it is later determined that the Federal income tax liabilities of the parties are subject to revision."

There are a number of cases which have held that a letter of protest may qualify as an informal refund claim which would be susceptible to amendment after the two year period had run. In *United States v. Kales*, 314 U. S. 186, 62 S.Ct. 214, the taxpayer had written a letter of protest in which she stated that she "will claim the right to a refund" if other pending litigation was decided in her favor. The court held that this was sufficient, and stated:

"This Court, applying the statute and regulations, has often held that a notice fairly advising the Commissioner of the nature of the taxpayer's claim, which the Commissioner could reject because too general or because it does not comply with formal requirements of

the statute and regulations, will nevertheless be treated as a claim where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period. *United States v. Memphis Cotton Oil Co.*, 288 U. S. 62, 53 S.Ct. 278, 77 L. Ed. 619; *United States v. Factors and Finance Co.*, 288 U.S. 89, 53 S.Ct. 287, 77 L. Ed. 633; *Bemis Bros. Bag Co. v. United States*, 289 U. S. 28, 53 S.Ct. 454, 77 L. Ed 1011; *Moore Ice Cream Co. v. Rose*, 289 U. S. 373, 384, 53 S. Ct. 620, 624, 77 L. Ed. 1265. This is especially the case where such a claim has not misled the Commissioner and he has accepted and treated it as such. *Bonwit Teller Co. v. United States*, 283 U. S. 258, 51 S.Ct. 395, 75 L. Ed. 1018; *United States v. Memphis Cotton Oil Co.*, *supra*, 288 U. S. at page 70, 53 S.Ct. at page 281, 77 L. Ed. 619."

Informal refund claims have also been recognized in recent years in *Cumberland Portland Cement Co. v. U. S.*, Ct. Cl. 1952, 104 F. Supp. 1010 (in which two judges concurred with the statement that "An equitable conclusion has been reached. If this is not the law, it ought to be.") *E. H. Stuart v. U. S.*, Ct. Cl. 1955, 130 F. Supp. 386, and *Hrčka v. Crenshaw, Collector*, 1956, 140 F. Supp. 350, *aff'd. per curiam* by CCA4, 237 F.2d 372.

In *Night Hawk Leasing Co. v. United States*, 18 F. Supp. 938, the Court of Claims held that even a notation on the back of a check paying the taxes was sufficient to constitute an informal claim, which was perfected by a formal claim filed after the statutory period had expired.

## V.

In the final alternative, appellants contend that the actions of the Commissioner of Internal Revenue constituted a waiver of his regulations to the required form of a refund claim.

Section 322(b)(1) of the 1939 Internal Revenue Code required only that a refund claim be filed within two years after the tax was paid. Since the first refund claim was filed only a few days after the tax was paid, (R. 6), there can be no question that the decedent complied with the terms of the *statute*. Appellants do not contend that the Commissioner could waive this statutory and jurisdictional requirement; however, we respectfully submit that the Commissioner may, and in this case did, waive the requirements of his regulations as to the form of the original refund claim.

This distinction between the function of the statute and the function of the regulations was pointed out by the Supreme Court in the case of *U. S. v. Memphis Cotton Oil Co.*, 288 U. S. 62, 53 S.Ct. 278 at 281:

“The line of division must be kept a sharp one between the function of a statute requiring the presentation of a claim within a given period of time, and the function of a regulation making provision as to form. The function of the statute, like that of limitations generally, is to give protection against stale demands. The function of the regulation is to facilitate research. The Commissioner has the remedy in his own hands if the claim



as presented is so indefinite as to cause embarrassment to him or to others in his Bureau. He may disallow the claim promptly for a departure from the rule. If, however, he holds it without action until the form has been corrected, and still more clearly if he hears it, and hears it on the merits, what is before him is not a double claim, but a claim single and indivisible, the new indissolubly welded into the structure of the old."

In *Smale & Robinson, Inc. v. United States*, 123 F. Supp. 457, a decision of the District Court for the Southern District of California, the court stated the general rule to be as follows:

"The Commissioner is powerless to waive the substantive requirements of the statute, *United States v. Garbutt Oil Co.*, 1938, 302 U.S. 528, 533-535, 58 S.Ct. 320, 82 L.Ed. 405, but he may waive the formal requirements of the regulations. *Tucker v. Alexander*, 1927, 275 U.S. 228, 48 S.Ct. 45, 72 L.Ed.253. Sound reason for holding that the Commissioner has power to waive such formalities, even though specified in regulations having 'the force of law' and binding the Commissioner as well as the taxpayer, *United States ex rel. Accardi v. Shaughnessy*, 1954, 347 U.S. 260, 265, 74 S.Ct. 499; *Chapman v. Sheridan-Wyoming Co.*, 1950, 338 U.S. 621, 629, 70 S. Ct. 392, 94 L. Ed. 393; *Bridges v. Wixon*, 1945, 326 U.S. 135, 153, 65 S.Ct. 1443, 89 L.Ed. 2103, is found in the fact that requirements as to form are designed for the benefit of 'the officers charged with the collection of the revenue.' *Nichols v. United States*, 1869, 7 Wall. 122, 126, 74 U.S. 122, 126, 19 L.Ed. 125.

"Authorized tax officials have the power then to waive regulatory requirements as to procedure and form

which are shown to be intended solely for the benefit of their convenience in the administration of the revenue laws."

As noted by the Supreme Court in *Angelus Milling Co. v. Commissioner*, 325 U.S. 293, 65 S.Ct. 1162, "Candor does not permit one to say that the power of the Commissioner to waive defects in claims for refund is a subject matter made crystal-clear by the authorities." However, we submit that consideration of all of the attendant facts in the instant case leads inevitably to the conclusion that the Commissioner's action constituted a waiver of his regulations as to the form of the refund claim.

We respectfully submit that the District Court failed to distinguish between the function of the statute and the function of the regulations.

### CONCLUSION

In conclusion, we respectfully submit that the record amply shows that the Commissioner of Internal Revenue was at all times fully aware of the nature of the decedent's claim. It is submitted that the District Court erred in permitting the government to retain the additional tax which it admits was improperly exacted from Louis C. Scharpf.

Respectfully submitted,  
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